

Decision **PROPOSED DECISION OF ALJ VIETH** (Mailed 2/20/2015)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Liberty
Utilities (CalPeco Electric) LLC (U933E)
for a Permit to Construct Electrical
Facilities with Voltages between 50 kV
and 200 kV: The 625 and 650 Line
Upgrade Project.

Application 10-08-024
(Filed August 30, 2010)

**DECISION GRANTING LIBERTY UTILITIES A PERMIT
TO CONSTRUCT PHASE 1 OF THE 625 AND 650 LINE UPGRADE
PROJECT
AND TO CONSTRUCT PHASES 2 AND 3 IN THE FUTURE SUBJECT
TO VERIFICATION OF PROJECTED LOAD GROWTH**

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Summary

This decision grants Liberty Utilities (CalPeco Electric) LLC a Permit to Construct (PTC) so that it may begin to upgrade the North Lake Tahoe Transmission System in three separate phases over time by building the Proposed Project, Alternative 4. The Environmental Impact Report (EIR) identifies Alternative 4 as the environmentally superior project. Our approval requires Liberty Utilities to obtain all necessary permits and other approvals required for each phase; construction of each phase is subject to all mitigation identified in the Mitigation Monitoring, Reporting, and Compliance Program, which has been developed in the course of environmental review.

This decision authorizes construction of Phase 1 to begin this year. Before construction of Phase 2 or Phase 3 may begin, we require verification of projected load growth in the form of a new network study, given flaws in the existing planning documents. The required verification must be filed as a Tier 2 advice letter so that Energy Division staff may review it for compliance with today's decision.

As the lead state agency for environmental review, we find and certify that the EIR prepared for this application meets the requirements of the California Environmental Quality Act and that there are overriding considerations that merit construction of the Proposed Project's Alternative 4 notwithstanding the potential for significant and unavoidable environmental impacts in two resource areas. These potential environmental impacts both are construction-related: the potential for injury to documented and undocumented

heritage, cultural and paleontological resources during construction in spite of best practices intended to avoid injury and, the temporary but negative, construction-related effect on air quality/climate change. We also find that the utility has complied with the policies governing the mitigation of electromagnetic field effects using low-cost and no-cost measures. This proceeding is closed.

1. Existing System; Proposed Project

Liberty Utilities (CalPeco Electric) LLC, which today's decision refers to as Liberty Utilities, seeks a Permit to Construct (PTC) for certain upgrades to its existing North Lake Tahoe Transmission System to enable eventual operation of that entire system at 120 kilovolts (kVs). Liberty Utilities proposes a three-phase construction schedule to upgrade the 625 Line, the 650 Line, several ancillary lines and five substations—North Truckee, Northstar, Kings Beach, Tahoe City and Squaw Valley—and to decommission the Brockway substation. The North Lake Tahoe Transmission System is located within the California portion of the Lake Tahoe basin. The North Truckee and Brockway substations and a small portion of the 650 Line (and the ancillary 132 and 609 Lines) are located in Nevada County; the rest of the North Lake Tahoe Transmission System, including all of the 625 Line, is in Placer County.¹

Attachment 1 to today's decision provides a schematic illustration of the current North Lake Tahoe Transmission System. As Attachment 1 shows, the North Lake Tahoe Transmission System basically comprises a loop consisting of

¹ The physical boundaries of Liberty Utilities' service territory extend beyond the North Lake Tahoe Transmission System; to the north, the service territory includes Portola (in Plumas County) and Loyalton (in Sierra County) and to the south, Walker (in Mono County). The North Lake Tahoe Transmission System is not part of the California Independent System Operator's transmission grid.

a series of 60kV and 120kV power lines² running from Truckee south to Squaw Valley, continuing south to Tahoe City, then east to Kings Beach, and then north back to Truckee. The following lines comprise the existing North Lake Tahoe Transmission System:

- One 60kV power line (609 Line) and one 120kV power line (132 Line) from Truckee to Squaw Valley;
- One 60kV power line from Squaw Valley to Tahoe City (629 Line);
- One 60kV power line from Tahoe City to Kings Beach (625 Line); and
- One 60kV power Line from Kings Beach to Truckee (650 Line).

The Kings Beach Diesel Generation Station, a generation component interconnected with this power line loop, can provide additional system capacity of up to 12 mega volt-amperes (MVA) during power outages and periods of peak demand. However, the applicable air quality permit limits diesel generation to 721 hours per year.

Liberty Utilities acquired the North Lake Tahoe Transmission System pursuant to Decision (D.) 10-10-017, which approved the sale by Nevada-based Sierra Pacific Power Company (Sierra) to Liberty Utilities of what was then Sierra's California service territory.³ In August 2010, two months before the Commission authorized the transfer, Sierra filed this PTC application. A little more than a year later in September 2011, Liberty Utilities fully assumed the PTC application when it filed an amendment to the application. The amendment includes all of the components of Sierra's initial upgrade proposal

² The Commission's General Order (GO) 131-D defines a power line as "a line designed to operate between 50 and 200 kV." (GO 131-D, Section 1.)

³ Sierra is part of NV Energy.

but recommends construction in three distinct chronological phases. The first construction phase would commence with the issuance of today's decision; each of the later phases would be tied to specified future growth in the service territory.

- Phase 1: Rebuild/reconductor the 650 Line (from Truckee to Northstar to Kings Beach) and the 132/650 Line double circuit to permit eventual operation at 120 kV and construct other infrastructure improvements to address existing low voltage conditions at the Northstar substation. (Some of this work subsequently was authorized by Commission Resolution E-4671, dated August 28, 2014, which approved Advice Letter (AL) 35-E.)
- Phase 2: Once system demand approaches 89 megawatts (MWs), upgrade the three 650 Line substations (North Truckee, Northstar, and Kings Beach) and, decommission Brockway substation with the re-routing 14.4 kV distribution feeders to the Kings Beach substation.
- Phase 3: Once system demand approaches 100 MWs, rebuild/relocate to straighten the 625 Line (from Tahoe City to Brockway Summit), thereby removing angle points (which have a higher probability of failure), and construct other improvements to permit operation of the entire loop at 120 kV, including the already 120 kV-rated 629 Line (Tahoe City to Squaw Valley), which at present can only be operated at 60 kV.

The application and amendment state that the upgrades are needed “to maintain a safe and reliable transmission system for the North Lake Tahoe area, while accommodating current and projected future growth.” (Application at 3; Amendment to Application at 2.) At present, the North Lake Tahoe transmission system lacks “single contingency reliability.” (*Id.*) Thus, “if one of several critical lines is lost during an intense storm event, a severe power outage could occur.” (*Id.*) In addition:

[T]he 625 Line experiences the most outages in the North Lake Tahoe transmission system due to snow loading and downed trees. Additionally, because the present line is constructed of wood poles, fire danger is an ever-present concern. Single-contingency reliability can be achieved by upgrading the 625 Line and the 650 Line to 120-kV conductors and insulators. Utilizing steel poles will further enhance the reliability of the lines. (Application at 3-4, quoted in substantial part in Amendment to Application at 2.)

The Environmental Impact Report (EIR)⁴ confirms this assessment and, moreover, states that construction of the upgrade proposal “would ensure that the North Lake Tahoe System complies with federal and state electric reliability regulations and safety standards.”⁵ (Final EIS/EIS/EIR at 2-5.) Among other things, the Proposed Project would increase reliability “through improved capacity, line accessibility, ability to re-route and redirect power so as to continue electrical service during a single-contingency outage” and also would minimize operation of diesel generation. (Final EIS/EIS/EIR at 2-4.)

The EIR recognizes that the North Lake Tahoe Transmission System “does not incur peak load levels at all times” but “must be capable of meeting the maximum demand when it does occur.” (Final EIS/EIS/EIR at 2-5; *see also*

⁴ As referenced in Section 3 and discussed more thoroughly in Section 4, the EIR is part of joint environmental document prepared by the Commission and the two other lead agencies. We use the term “EIR” when referring generically to the Commission-sponsored portions of the joint document; however all citations to the document specifically refer to the Draft EIS/EIS/EIR or the Final EIS/EIS/EIR, as appropriate.

⁵ The EIR references state law including the Reliable Electric Service Investments Act (Public Utilities Code §§ 399 et seq.), which mandates prudent utility investments to ensure reliable electric service. It also references North American Electric Reliability Corporation (NERC) standards, among them NERC Reliability Standard TPL-002-0b, which requires a system to have the capability to supply peak loads at adequate voltage levels without overloading system components when any one component is out of service (single contingency reliability, also referred to as “N-1 contingency”).

Appendix P at P1a-14.) At present, even with the Kings Beach Diesel Generation Station running, “the system cannot currently provide single-contingency reliability during peak loads ... and is experiencing peak demands in excess of design capacity.” (*Id.*) The Final EIR’s Master Response 6 notes such an incident; even with corrections for modelling errors discussed in Section 5.5, the need for upgrades, over time, remains:

[T]he most recent example of peak demand in which the lines exceeded rated capacity was from December 20, 2012 through January 9, 2013. During this period, the 650 Line reached 102 percent of rated capacity. During this same period, the 629 Line ... was loaded to 40 percent of rated capacity to provide power to the Tahoe City area. However, had there been an outage along the 629 Line during this peak demand period, power would have had to have been redirected to Tahoe City via the 650 and 625 Lines, with the 650 Line already carrying power in excess of its rated capacity. Had this scenario occurred, even with the assistance of energy deliveries from NV Energy via Incline and the use of the Kings Beach Diesel Generating Station, CalPeco [Liberty Utilities] would have had to shed load, imposing rolling blackouts that would mean loss of power to residential and business customers, as well as public safety operations such as street lights and traffic lights. (*See* Final EIS/EIS/EIR, [Appendix P] at P1a-15.)

In summary, the EIR confirms both reliability and safety benefits of the upgrade proposal:

- Reliability Improvement: “Addressing normal and projected loads, providing single-contingency reliability, and reducing dependence on the Kings Beach [diesel plant]” by upgrade of the 625 and 650 Lines and associated substations (from 60 kV to 120 kV). (Final EIS/EIS/EIR at 2-5.)
- Reducing Risks of Wildfire & Vegetation-Related Outages: “[R]eplacing existing wooden poles with the proposed steel poles, which are stronger and more resistant to wildfire” and “[r]aising the elevation of the

lines and widening the vegetation management corridor” as required for conversion from 60 kV to 120 kV. (*Id.*)

- Improved Access to 625 Line for Maintenance:
“[R]e-routing the 635 Line to a less remote location with existing access roads, and creating new overland travel ways where needed” as well as “[i]mproving truck access ... for inspections and maintenance.” (*Id.*)

These benefits would occur over time. At the conclusion of Phase 1, the reconductoring on 650 Line would increase reliability and improve power flows, though the line would continue to operate at 60 kV until completion of the 650 Line substation retrofits in Phase 2. The EIR confirms Liberty Utilities’ projection that Phase 2 would be needed as system demand approaches 89 MW; based on Liberty Utilities’ load growth projections of 1 MW per year in the near term, Phase 2 might be needed by 2016. However, commencement of Phase 3 could be a decade or so in the future. The EIR confirms Liberty Utilities’ projection that Phase 3 would be needed when system demand approaches 100 MW, which could occur in 2027, again based on Liberty Utilities’ load growth projections of 1 MW per year. The most controversial issue in this proceeding is the timing for commencing construction of Phases 2 and 3.

Sierra’s application estimates the construction cost at \$23,472,578 (Application at 4). Liberty Utilities’ amendment revises the cost estimate for the three-phase construction project to \$46,269,000 and suggests that the prior estimate was inaccurate (or incomplete) because “Sierra’s calculations made in support of the Sierra Application indicate the cost of the Project is \$42,201,000.” (Amendment to Application, FN 6 at 4.) Liberty Utilities’ figure is the result of “inflating the estimates developed by Sierra to current-year projections, and including certain Project-required costs that Sierra did not include in its initial

estimate. (Amendment to Application, at 4.) The application, amendment and the environmental documents refer to this proposal, and the various alternatives that meet the same project objectives, as the 625 and 650 Line Upgrade Project. Today's decision refers to all of these, generically, as the Proposed Project.⁶

2. Procedural Background

On August 30, 2010, Sierra filed the initial application in this docket, which includes a Proponent's Environmental Assessment (PEA) as required by Rule 2.4 of the Commission's Rules of Practice and Procedure (Rules). Later that year, Liberty Utilities acquired Sierra's California service territory and, on September 30, 2011, filed an amendment to the application. No protests or responses were filed to either the application or amendment, nor did any person or entity seek party status at the first prehearing conference (PHC) held on February 13, 2012. On May 15, 2012, the assigned Commissioner filed a scoping memo to identify the scope and schedule as required by Pub. Util. Code §1701.1(b).

Nearly a year thereafter on January 15, 2013, David R. McClure (McClure) filed a motion for party status on behalf of North Tahoe Self Storage, LLC. Because the motion failed to comply with Rule 1.4(b) of the Rules,⁷ the assigned Administrative Law Judge (ALJ) denied the motion on March 13, 2013, without prejudice to refiling. On April 18, 2013, McClure filed a motion for party status on behalf of North Tahoe Citizen Action Alliance (NTCAA) and requested hearings on the feasibility of mitigation measures and on any statement of

⁶ Section 5.1 examines (and differentiates) Liberty Utilities' proposal and the four other alternatives studied in the environmental documents.

⁷ Rule 1.4(b) requires disclosure: who seeks party status, what interest that person or entity has in the proceeding, how that person or entity proposes to participate and how the intended participation "will be reasonably pertinent to the issues already presented." (Rule 1.4(b).)

overriding consideration. Because the Draft EIR had not yet been published, no mitigation measures had been identified and similarly, the need for a statement of overriding consideration was speculative. Accordingly, on May 20, 2013, the ALJ ruled that the motion was premature and denied it without prejudice. On August 21, 2013, an amended scoping memo revised the schedule, given the ongoing environmental review. The Commission and other reviewing agencies released the Draft EIS/EIS/EIR in November 2013 and commenced preparation of the Final EIS/EIS/EIR.

A second PHC, on February 3, 2014, followed the close of the public comment period after release of the Draft EIR. At that PHC, Ronald Grassi (Grassi) sought party status and NTCAA renewed its request for party status.⁸ The ALJ granted party status to each, expressly limited to participation within the scope of review as enunciated in the existing scoping memos and subject to any future modifications. However, because Grassi and NTCAA both sought to broaden the scope of review to include need and cost, the ALJ and the assigned Commissioner (who was present during this portion of the PHC), heard the parties' arguments and took the matter under submission.⁹ The second

⁸ Grassi owns a home and resides, part time, in the Lake Tahoe basin. McClure, who resides in Nevada, is President of NTCAA, a California nonprofit corporation organized "to empower North Tahoe citizens with knowledge; clarify concern; share and verify information; expand the understanding of environmental and infrastructure impact; acknowledge and integrate different viewpoints to embrace a shared vision." (NTCAA Articles of Incorporation, Attachment 2 to NTCAA's Notice of Intent to file Intervenor Compensation, filed March 4, 2014.)

⁹ As discussed further in Section 4, a PTC application does not require an extensive showing on cost or need, unlike an application for a Certificate of Public Convenience and Necessity (CPCN). A PTC application is required, and must be approved, before a Commission-regulated utility may build electric lines and other electric facilities rated between 50 kV and 200 kV. A more extensive CPCN application is required for electric lines and facilities above 200 kV.

amended scoping memo, filed on August 21, 2013, declined to expand the scope but revised the schedule.

Several motions followed in the spring and summer of 2014. Grassi sought to expand the scope in a motion filed on May 1, 2014, and amended on May 15, 2014, and in an additional motion filed on July 9, 2014. On May 20, 2014, NTCAA filed a motion to compel certain responses to discovery. In September 2014 the reviewing agencies released the Final EIS/EIS/EIR and thereafter, by joint ruling on September 23, 2014, the assigned Commissioner and ALJ denied Grassi's motions and denied, in part, NTCAA's motion to compel. The joint ruling directed NTCAA and Liberty Utilities to meet and confer on the remainder of the motion to compel and it set a third PHC, and a consecutive law and motion hearing, for September 30, 2014.

Thereafter, consistent with procedural discussions among the parties that resulted in their joint request to cancel both hearings and to further revise the schedule, the ALJ took both hearings off calendar. The third amended scoping memo, filed on October 6, 2014, revised the schedule as the parties proposed, setting dates for the distribution of prepared testimony and setting evidentiary hearing for November 3 and 4, 2014.¹⁰ On October 13, 2014, NTCAA filed an amendment to the still-unresolved portion of its May 20, 2014, motion to compel and on October 24, 2014, Liberty Utilities filed a response. Today's decision addresses the outstanding motion (see Section 11.)

¹⁰ The third amended scoping memo provides for direct prepared testimony by all parties (to be served by Liberty Utilities on October 3, 2014, and by intervenors on October 10), followed by Liberty Utilities' rebuttal (to be served on October 15, 2014). By email dated October 17, 2014, and served on all parties, Liberty Utilities advised that it saw no need to offer rebuttal and would not do so.

Additional procedural discussion among the parties after the distribution of prepared testimony resulted in their joint request to cancel evidentiary hearings and proceed to briefing on the revised schedule that they proposed. The ALJ's email ruling on October 15, 2014, granted this request. In an email ruling on October 20, 2014, the ALJ identified all documentary evidence (the parties' previously distributed prepared testimony) and ordered its receipt in evidence. The parties filed concurrent opening briefs and concurrent reply briefs, respectively, on November 4 and November 11, 2014. This proceeding was submitted for decision on February 17, 2015, upon the release of Appendix P4 to the Final EIS/EIS/EIR.

3. Environmental Review

3.1. Joint Review by Lead Agencies

The three lead agencies have conducted a joint environmental review of the Proposed Project.

Pursuant to the Commission's GO 131-D, which governs review of a PTC application for power lines and associated substations, the Commission must find that a project complies with the California Environmental Quality Act (CEQA).¹¹ Here, the Commission is the lead state agency under CEQA and in that role must conduct a review of Liberty Utilities' proposal and all identified project alternatives. CEQA requires the Commission to examine the potential environmental impacts and ways to avoid or reduce environmental damage, and to prepare a written, environmental assessment. The Commission determined to prepare an EIR for this PTC application.

¹¹ CEQA is codified at Public Res. Code §21000, *et seq.*

Because Liberty Utilities' service territory includes part of the Lake Tahoe basin, Liberty Utilities' proposal and all identified project alternatives also must be reviewed under the Tahoe Regional Planning Compact (Public Law 96-551) as well as under the National Environmental Policy Act (NEPA). The Tahoe Regional Planning Agency (TRPA) is the lead local agency for determining compliance with the Compact. The lead federal agency under NEPA is the USDA Forest Service, Lake Tahoe Basin Management Unit and Tahoe National Forest (Forest Service) and the United States Army Corps of Engineers is a federal cooperating agency. TRPA and the Forest Service each determined to prepare an Environmental Impact Statement (EIS).

3.2. Review Chronology

Pursuant to a memorandum of understanding executed on May 18, 2011, the Commission, TRPA and the Forest Service agreed to undertake concurrent environmental review, with TRPA managing the joint effort. The impact of the recent economic recession delayed the hiring of an environmental consultant, but following execution of that contract and the filing of Liberty Utilities' amendment to application, environmental review formally commenced. On March 26, 2012, the lead agencies released a joint Notice of Intent (NOI)/Notice of Preparation (NOP) to advise agencies and the public of the pending preparation of an EIS/EIS/EIR and the dates and locations for public scoping meetings.

Two scoping meetings were held, on April 17, 2012, in Kings Beach and on April 19, 2012, in Truckee, and the scoping period closed on April 25, 2012. The Draft EIS/EIS/EIR was released on November 8, 2013. Public meetings followed at TRPA's office on November 20 and December 4, 2013. Two informal meetings were held on December 10, 2013, during the afternoon (at Truckee) and evening (King's Beach). The public comment period closed on

January 7, 2014 and the Final EIS/EIS/EIR was released on September 19, 2014. Several appendices to the Final EIS/EIS/EIR, including Appendix P4, which was released separately on February 17, 2015, address comments and letters received after the close of public scoping. Appendix P4 also memorializes a December 17, 2014, technical conference call among the Commission's CEQA staff, Liberty Utilities and NTCAA to discuss the measurement of system demand related to the Phase 2 and 3 construction triggers and includes final submissions by Liberty Utilities and NTCAA on this point.

3.3. California Environmental Quality Act (CEQA)

Because this Commission's environmental authority and obligations necessarily focus upon CEQA, as mentioned in footnote 4, today's decision typically refers only to the EIR portion of the joint EIS/EIS/EIR. Under CEQA, the Commission must consider the EIR in determining whether to approve a project or a project alternative. CEQA precludes the lead agency from approving a project or a project alternative unless the lead agency requires the project proponent to eliminate or substantially lessen all potential, significant, adverse effects on the environment, where feasible. Where unavoidable, significant, adverse environmental impacts remain, the lead agency cannot approve a project unless it finds that overriding considerations render those impacts acceptable nonetheless. (CEQA Guidelines §§ 15090, 15091, 15093, 15126.2, 15126.4, and 15126.6.)

The EIR identifies five project objectives and examines Liberty Utilities' proposal and all project alternatives for their ability to fulfill these objectives:

1. Provide normal capacity for current and projected loads;
2. Provide reliable capacity to assure adequate service to all customers during single-contingency outages;
3. Reduce dependence on the Kings Beach Diesel Generation Station;

4. Reduce the risk of fire hazards and outage durations associated with wooden poles and encroaching vegetation; and
5. Provide more reliable access to the 625 Line for operation and maintenance activities.

During the public comment process, a number of individuals and groups raised concerns about the Purpose and Need section of the Draft EIS/EIS/EIR. In March 2014, TRPA advised:

In order to address these comments in a robust manner, the Lead Agencies decided to contract with an expert consultant, through an existing CPUC contract, to review those sections of the [Draft EIS/EIS/EIR] and underlying information submitted by Liberty [Utilities] to provide an independent, third party analysis of the [EIS/EIS/EIR's] approach and conclusions. (Attachment to Second Amended Scoping Memo, filed April 2, 2104 [Memo from John L. Marshall, TRPA General Counsel to Mike Florio, CPUC Commissioner, March 14, 2014, Re: Process for Responses to Comments on Purpose and Need for the Liberty [Utilities] 625/650 Upgrade Project].)

We discuss this issue further in Section 5.5.

4. Scope of Issues

In the course of a PTC review under GO 131-D, the Commission must ensure compliance with the requirements of CEQA, including notice. In addition, pursuant to GO 131-D and D.06-01-042, the Commission must ensure that a project's design is in compliance with the Commission's policies governing the mitigation of electromagnetic field (EMF) effects using low-cost and no-cost measures.

Section IX.B. of GO 131-D specifies, in parts 1.a. through e., the information that must be included in a PTC application. Subsection 1.f. provides that notwithstanding these requirements, a PTC application "need not

include either a detailed analysis of purpose and necessity, a detailed estimate of cost and economic analysis, a detailed schedule, or a detailed description of construction methods beyond that require for CEQA compliance.” (GO 131-D, IX.B, 1.f.)

Accordingly, the assigned Commissioner’s scoping memo determined the following issues to be within the scope of the proceeding.

1. Will the proposed project create significant environmental impacts?
2. Are there potentially feasible mitigation measures or project alternatives that will eliminate or lessen the significant environmental impacts?
3. As between the proposed project and identified project alternatives, which is environmentally superior?
4. Are the mitigation measures or project alternatives infeasible?
5. To the extent that the proposed project and/or project alternatives result in significant and unavoidable impacts, are there overriding considerations that nevertheless merit Commission approval of the proposed Project or Project alternative?
6. Was the EIR completed in compliance with CEQA, did the Commission review and consider the EIR prior to approving the project or a project alternative, and does the EIR reflect the Commission’s independent judgment?
7. Are the proposed project and/or project alternative designed in compliance with the Commission’s policies governing the mitigation of EMF effects using low-cost and no-cost measures?

(Scoping Memo and Ruling, May 15, 2012, at 9-10.)

The amended scoping memo and second amended scoping memo confirmed this scope. Grassi and NTCAA have continued to challenge both the

cost and the need, and have attempted to litigate both issues at the Commission. Consistent with longstanding precedent, the Commission has declined to embark on a detailed review of cost and need.¹² To do otherwise would convert PTC review into the more extensive review required for a CPCN. Two decades ago, in D.94-06-014, the Commission established a streamlined process for review of PTC applications, after determining that the often lengthy CPCN was ill-suited for the review of power lines, substations and other electric facilities rated at 200 kV and less. To enable utilities to serve their customers in a timely and efficient manner, the Commission endorsed the simpler PTC review process we have followed since that time.¹³

Thus, the scoping memo and its subsequent amendments clearly explained that the PTC review would focus on environmental issues, with environmental review of issues 1-3, above, occurring through a parallel, but concurrent, study and analysis conducted in accordance with CEQA. As noted previously, the work product of the entire environmental review process is the EIS/EIS/EIR and under CEQA, the Commission must certify the EIR portion.

¹² For the reasons noted in Section 3.3 and as further discussed in Section 5.5, the Purpose and Need section of the EIS/EIS/EIR has been subject to heightened review.

¹³ D.94-06-014 states:

The process we adopt for lines between 50 kV and 200 kV differs from the review that results in the issuance of a certificate of public convenience and necessity (CPCN) for lines over 200 kV. The process will result in a “permit to construct” and our review focuses solely on environmental concerns, unlike the CPCN process which considers the need for and economic cost of a proposed facility. (*Re: Rules, Procedures and Practices Applicable to Transmission Lines Not Exceeding 200 Kilovolts*, (1994)
55 CPUC 2d 87, 93 [adopting GO 131-D to establish a PTC review process, among other things].)

The scoping memo and subsequent amendments also identified issues 4 and 5, above, as the only two that potentially could require hearings and explained how a record would be developed, if necessary. In this respect, the scoping memo stated:

If, for example, the Commission must make specific findings on feasibility or issue a statement of overriding considerations and the ALJ or I determine that the record is insufficient, supplementation of the record in a timely and legally sufficient manner can be accomplished by requiring a further showing from [Liberty Utilities]. Such a showing necessarily would address the specific economic, legal, social, technological or other considerations that render any project alternatives or mitigation measures infeasible [*FN omitted*] or the specific economic, legal, social, technological, or other benefits of the project that outweigh the adverse environmental impacts. [*FN omitted.*] Such a showing *should not* duplicate matters that will be assessed in the EIR. (Scoping Memo at 10-11.)

5. Discussion

5.1. Proponents Environmental Assessment (PEA) and Other Alternatives Studied

The EIR evaluates five alternatives: the utility proposal and three other route modifications (the EIR refers to these four as the “action” alternatives) and the No Project Alternative. The four action alternatives all contain the same basic project components.

- Alternative 1 – This is the Sierra/Liberty Utilities proposal, also referred to in the EIR as the PEA Alternative. The major components include:
 - Rebuilding the existing 60kV 625 Line from Tahoe City to Kings Beach as a 120kV power line in a new, straighter right-of-way (ROW) paralleling the Mount Watson Road (about 15 miles);

- Rebuilding most of the existing 60kV 650 Line from Kings Beach to Truckee as a 120kV power line largely within the existing ROW (about 10 miles);
 - Converting the existing 650 Line Northstar “tap” into a “fold,” which would allow service to be maintained at the Northstar Substation in the event of an interruption in service on either side of the power lines into it;
 - Constructing a new Kings Beach 120kV substation adjacent to the Kings Beach Diesel Generation Station and decommissioning the existing Brockway Substation;
 - Reconstructing the Tahoe City Substation as a 120kV substation; and
 - Modifying the existing North Truckee Substation, Northstar Substation, and Squaw Valley Substation to accommodate the conversion of 60kV system to a 120kV system.
- Alternative 2 – Also referred to in the EIR as the Modified Alternative, this is a modification of Alternative 1 and reroutes some portions of the alignment based on public and agency input during the scoping process.
 - Alternative 3 – Also referred to in the EIR as the Road Focused Alternative, this reroutes the 625 Line to more closely follow existing roads including the Fiberboard Freeway (the paved road between the Mount Watson area north of Tahoe City and the Brockway Summit area) and places more of the 650 Line alignment along State Route (SR) 267.
 - Alternative 4 – Also referred to in the EIR as the Proposed Alternative, this is a combination of Alternative 3 (Road Focused Alternative) for the 625 Line improvements and elements of Alternative 1 (PEA Alternative) and Alternative 3 (Road Focused Alternative) for the 650 Line improvements.
 - Alternative 5 – This is the No Project Alternative; none of the six project components would go forward. Additional vegetation management would occur (likely, clearing beyond existing ROWs) and any compromised wooden poles would be replaced. Roadway access could be bladed into remote sections of 625 Line during emergency

outages. Liberty Utilities also would seek wider easements to permit safer vegetation management near overstressed/overheated conductors, which are anticipated.

NTCAA and Grassi argue that the EIR fails to comply with CEQA because the action alternatives, which essentially examine alternative routings of the PEA's proposed loop rebuild, are "token alternatives" that constitute a "contrived choice" and evidence "gamesmanship." (NTCAA Opening Brief at 7, Grassi Opening Brief at 8.) But the similarity among the four action alternatives does not violate CEQA. (CEQA Guidelines §15126.6(f); Final EIS/EIS/EIR, Appendix P at P1a-9.) And, as discussed below, CEQA does not mandate that an EIR identify a project opponent's proposed alternative (the one endorsed by NTCAA and Grassi) as a viable project alternative.

5.2. Alternatives Eliminated

An EIR must describe a reasonable range of alternatives to a proposed project that feasibly attains most of the basic project objectives but avoids or substantially lessens any of the significant effects of the project. (CEQA Guidelines §15126.6.) "An EIR need not consider every conceivable alternative to a project." (CEQA Guidelines §15126.6(a).) However, a lead agency must identify alternatives considered but rejected during the planning/scoping process and briefly explain the rationale for rejection. (CEQA Guidelines §15126.6(c); Final EIS/EIS/EIR, Appendix P at P1a-10 through -13.)

The planning, scoping and preparation of this EIR saw multiple ideas and numerous proposals for developing alternatives to the PEA Alternative. Many of these suggestions, alternatives, or elements of alternatives were incorporated into one or more of the sixteen potential alternatives identified for further screening along with the PEA Alternative. Subsequently, twelve alternatives were eliminated from detailed evaluation because, for example, they failed to

meet most of the project objectives, failed to eliminate significant environmental impacts, and/or were determined to be technically infeasible. The EIR discusses, in detail, the screening process and rationale for eliminating specific alternatives and the EIR's Table 3-6 summarizes the screening analysis.

The rejected alternatives range from "different substation location and power line alignments and designs, to various expansions of existing system options, as well as 'non-wires alternatives'." (Draft EIS/EIS/EIR at 3-69; Final EIS/EIS/EIR at 3-75.) The latter "include methods of meeting project objectives that do not require major electrical lines (e.g., development of renewable energy supplies, conservation and demand side management to reduce electrical usage and prevent the need for facility upgrades)." (*Id.*) The eliminated wire and wire-related alternatives include the following: rebuild only the 650 Line at 120 kV; operate the 629 Line at 120 kV; reconductoring the 609 Line from Truckee to Squaw Valley; completing a closed 120 kV loop to the Incline Substation from Kings Beach Substation; utilizing distribution backup for single-contingency transmission outages; utilizing additional diesel generation to provide reliable capacity for transmission outages; building a submarine cable alternative; constructing power lines underground; utilizing reactive capacitance to delay the need for the project; and relocating the Tahoe City substation.

The Final EIR's Master Response 5 discusses in detail the various alternatives and partial alternatives suggested by those who commented on the Draft EIR, including the rationale for rejecting many of those proposals. (See Final EIS/EIS/EIR, Appendix P at P1a-9 through -13). Among the rejected alternatives is the one proposed by NTCAA's consultant, Thomas A. Besich (Besich), both in comments during the environmental review process and in his Exhibit (Ex.) 3 prepared testimony.

Besich, an electrical engineer and consultant with many years' experience, contends that only part of Phase 1 is needed - primarily, reconductoring of the northern portion of the 650 Line between Truckee and the existing Northstar tap.¹⁴ He recommends: "For transmission contingencies during periods of high load like the Christmas to New Years annual peak, continue to utilize the established practice of load rolling between Brockway ... and NVE's Incline substation." (Ex. 3 at 4.) Besich states that this practice, together with reevaluation to ensure accurate modelling of the "load diversity ... between the ski resort loads at Squaw Valley and Northstar and the rest of the system" and the identification of both reactive resources currently available (including diesel) and demand side management possibilities, provide "the opportunity to delay for many years" a full build out to 120 kV. (*Id.*) In comments on behalf of NTCAA made during the environmental review process and in NTCAA's briefs and prepared testimony, Besich, McClure and Grassi refer to this strategy alternatively as the Proper Plan, the Public Alternative or the Alternative Staging Sequence. Essentially, it is a composite of several of the partial alternatives; the EIR eliminates it because, like the partial alternatives, it does not meet most of the project objectives. (Final EIS/EIS/EIR, Appendix P at P1a-157.)

Fundamentally, as we discuss in Section 5.5, need and cost assessments and concerns underlie most of the opposition to the Proposed Project.

5.3. Environmental Impacts

The EIR's Table ES-2 summarizes the potential environmental effects associated with each of the four action alternatives (Alternatives 1-4), the

¹⁴ Besich's resume is Ex. TAB-1 to Ex. 3.

mitigation measures identified to reduce significant and potentially significant effects, and the significance of impacts both before and after mitigation. For one or more of these four action alternatives, the potential environmental impacts in three resource areas cannot be reduced through mitigation to less-than-significant: biological resources; cultural resources; and air quality. We examine each of these potential impacts in greater detail below.

For three other resource areas, construction of one or more of the four action alternatives would result in significant or potentially significant impacts, but mitigation would reduce such impacts to less-than-significant: hydrology and water quality; hazards and hazardous materials; and noise. The EIR finds no impact or a less-than-significant impact in the following seven resource areas: land use; forestry resources; scenic resources; geology, soils, and land capability coverage; public services and utilities; and traffic and transportation. The EIR did not review two resource areas, agricultural resources and housing, as none of the action alternatives would affect either, given the basic components of the Proposed Project or the conditions in the surrounding area.

Overall, if the sole determinative factor is the significance of environmental impacts, the EIR concludes that little difference exists between the four action alternatives. “[W]here there are differences in environmental effects ... it is often a matter of some degree of more or less effect among the alternatives rather than one or more of the alternatives generating an environmental effect that the others do not.” (Draft EIS/EIS/EIR at ES-6; Final EIS/EIS/EIR at ES-7.) Design changes in certain alternatives to reduce impacts in one area may increase impacts in another.

The No Project Alternative (Alternative 5) represents a “no change” scenario and therefore would result in no construction-related environmental impacts. Other than the short-term activities associated with increased

vegetation management and other ROW maintenance, little change to the existing environment would occur. However, the No Project Alternative meets none of the basic project objectives – system capacity, reliability, reducing dependence upon Kings Beach diesel generation, reducing outages attributable to fire and other environmental hazards, or better access for maintenance.

5.3.1. Biological Resources

The EIR finds potentially significant impacts, which cannot be mitigated to a less-than-significant level, for Alternates 1 and 2 (but not Alternates 3 and 4). The immitigable significant impacts are attributable to vegetation removal that would result in permanent habitat loss near northern goshawk nests, which TRPA prohibits. (See Final EIS/EIS/EIR, Table ES-2, 4.7-6 at ES-32.)

5.3.2. Heritage, Cultural and Paleontological Resources

The EIR finds potentially significant impacts, which cannot be mitigated to a less-than-significant level, for all action alternatives, Alternates 1 through 4. Construction of any of these alternatives could result in damage to or destruction of significant heritage and cultural resources, both documented and undocumented, as well as the unanticipated discovery of human remains. Known cultural and historic resources exist (depending upon the alternative, as few as nine and as many as 17 resources could be affected) and some parts of the area have not been surveyed.¹⁵ Further, one historic cemetery is located within the “area of potential effect” for the existing and proposed 650 Line. The EIR states: “Although there is a low potential for human remains to be

¹⁵ These are resources recommended for or considered to be eligible for listing in the National Register of Historic Places or the California Register of Historic Resources.

discovered during ground disturbance for the project, construction activities would have the potential to disturb human remains, including those interred outside of formal cemeteries.” (EIS/EIS/EIR, Table ES-2, 4.9-3 at ES-36.)

Ex. 1, the prepared testimony of Liberty Utilities’ witness and its President, Michael R. Smart (Smart), points out that the EIR does not conclude that significant effects will occur. This is accurate; it is uncertain whether construction of the Proposed Project would lead to the discovery of documented or undocumented heritage, cultural and paleontological resources – or whether their discovery would lead to damage. Rather, the concern is that given the uncertainty, there is no clear way to ensure the avoidance of a significant impact. Critically, Liberty Utilities affirmatively states it will conform to all mitigation measures specified.

5.3.3. Air Quality/Climate Change

The EIR finds potentially significant impacts, which cannot be mitigated to a less-than-significant level, for all action alternatives, Alternates 1 through 4. The inmitigable significant impacts are attributable to the “daily construction-related emissions of reactive organic gases, oxides of nitrogen (NO_x), respirable and fine particulate matter less than 10 microns and 2.5 microns in diameter (PM₁₀ and PM_{2.5}), and carbon monoxide (CO).” (Final EIS/EIS/EIR, Table ES-2, 4.13-1 at ES-44.) Certain of these construction-related emissions would exceed significance thresholds set by the Placer County Air Pollution Control District or by the Northern Sierra Air Quality Management District and/or would contribute to nonattainment status of PM₁₀ and PM_{2.5} in the Mountain Counties Air Basin and of PM₁₀ in the Lake Tahoe Air Basin.

The EIR finds that emissions in Placer County can be offset by payment of fees to Placer County’s Clean Air Grants Program, but Nevada County does not

have a similar program. Liberty Utilities affirmatively states it will conform to all mitigation measures specified.

5.4. Alleged Infeasibility of Alternatives 1-4

The EIR identifies tree removal, a biological resource impact under each of the four action alternatives, as a significant environmental effect that can be mitigated to a less-than-significant level.¹⁶ NTCAA and Grassi, in prepared testimony and briefs, challenge tree removal.

It is undisputed that the tree removal associated with each of the action alternatives reaches a level of environmental significance under TRPA regulations. The Final EIR's Table ES-1C subtotals tree removal for the 650 Line and 625 Line portions of each of the action alternatives, as well as the totals.¹⁷ Alternative 1 has the highest total, 56,800 trees; Alternative 4 has the second lowest, 44,860 trees. Across all alternatives, another approximately 3,800 trees would be removed during removal of the old 625 Line. The Final EIR's Table F-1, adds these trees into its count and shows a comprehensive total for Alternative 4 of about 48,704 trees.

Where construction of a project alternative would have significant environmental effects, the Commission may not approve the project without the mitigation identified to reduce those effects to a less than significant level unless the Commission finds that the identified mitigation is infeasible (of course, the latter scenario also would require a finding of overriding considerations). (CEQA Guidelines § 15091(a)(3).) Under CEQA, an alternative or mitigation

¹⁶ The EIR identifies and discusses tree removal together with the potential loss of late seral/old growth forest. The latter can largely be avoided by the mitigations prescribed in the EIR and neither NTCAA nor Grassi appears to challenge the feasibility of those mitigations.

¹⁷ These counts are for removal of trees > than 1" of diameter at breast height (dbh).

measure is “feasible” if it is “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.” (Pub. Res. Code § 21061.1; CEQA Guidelines § 15364.)

The tree removal mitigation specified in the EIR includes a focused tree survey by a Registered Professional Forester and development of a “timber removal/tree harvest plan,” review of the plan by CalFire, and application for and issuance of all necessary permits before any tree removal activities commence. (Final EIS/EIS/EIR, Table ES-2, Section 4.7-4 at ES-30.) On non-Federal lands in Placer County, the EIR specifies that mitigation also requires vegetation restoration, including restoration to offset the loss of trees attributable to the 625 Line construction in Phase 3 of the Proposed Project. If this offset effort should prove insufficient to comply with Placer County ordinances, then the EIR requires additional mitigation, as Placer County may determine, to “replace trees at an offsite location or contribute to the County’s Tree Preservation Fund.” (*Id.*)

In prepared testimony, Grassi and NTCAA contest the feasibility of tree removal mitigation. Grassi states that the tree removal “directly causes ... an environmental disaster by cutting down 29,000 trees in the Tahoe Basin (resulting in a total loss of approx. 42,000 trees).” (Ex. 4 at 3.) NTCAA, through its witness McClure, states that this mitigation is infeasible “due to the unprecedented scale of tree removal, lack of any determination of amount of compensation or value, and no direct connection between the impact occurring in the Lake Tahoe Basin and whatever compensation is negotiated going to a general Placer County Tree Fund.” (Ex. 2 at 3.) Grassi’s opening brief goes further, arguing that tree mitigation “is impossible to evaluate” because no standards exist to measure what a tree is worth, or its scenic value in the

landscape. (Grassi Opening Brief at 10.)

Neither Grassi nor NTCAA establishes infeasibility, as CEQA defines that term. They characterize the mitigation as insufficient, but that is an adequacy challenge the EIR examines and rejects. (Final EIS/EIS/EIR, Appendix P at [P1a-51].) They also contend that the impact could be avoided altogether - by employing load rolling, more demand side management, or other means, rather than by upgrading 625 Line - but the EIR rejects that challenge, which really is a criticism of the alternative selection process because it does not include the alternative they prefer. (Final EIS/EIS/EIR, Appendix P at P1a-157.)

The EIR-prescribed tree removal mitigation meets the requirements of CEQA. Each step in the mitigation process can be performed in a timely way, in coordination with and under the oversight of the governmental agencies with jurisdictional authority, including TRPA and Placer County. (Final EIS/EIS/EIR, Appendix P at P1a-157.) Moreover, the prepared testimony of Liberty Utilities' witness Smart expressly commits to comply with this mitigation, as well as all others.¹⁸

5.5. Measuring Future Demand

Under Liberty Utilities' three-phase construction proposal, demand would trigger the commencement of Phase 2 construction and later, of Phase 3 construction. This change from Sierra's proposal is based on Liberty Utilities'

¹⁸ Liberty Utilities' prepared testimony focuses on Alternative 4, the environmentally preferred alternative, but the feasibility question is no different for the other action alternatives. "Alternative 4 is not infeasible. Liberty Utilities can proceed to construct the Project as described in Alternative 4" and "Liberty Utilities has agreed to perform or execute over

100 Applicant Proposed Measures ... as well as agency-imposed Mitigation Measures identified in the Final EIS/EIS/EIR in proceeding with Alternative 4." (Ex. 1 at 2.)

lower load growth forecasts (1% annually), compared to Sierra's (3% annually). Liberty Utilities states: "Importantly, the proposed deferral of Phases 2 and 3 is contingent on the accuracy of the assumption of annual load growth at 1%; if that assumption proves too conservative, [Liberty Utilities] may need to advance the schedules it is proposing for Phase 2 or 3." (Amendment to Application at 6.) The EIR points out that lower growth could also require a schedule adjustment. Clearly, accurate demand measurements are necessary to establish an accurate schedule.

In a sense, Liberty Utilities' phased construction proposal-based on actual load growth-presages the concerns of NTCAA and Grassi (and other participants in the environmental review process), who argue that most of the 625 and

650 Line upgrade project is not urgent and should be delayed. Pointing to Liberty Utilities' relatively small customer base of approximately 49,000 accounts, opponents add that most of the upgrade is too costly to be built now and moreover, that delay would avoid the environmental impacts identified in the EIR.¹⁹ While NTCAA and Grassi agree that the northern portion of the 650 Line upgrade should proceed, they argue that the rest of Phase 1 and all of Phases 2 and 3 can and should be delayed, potentially for decades.

19 Future ratemaking for the Proposed Project, or any of the 3 Phases, is not at issue in this docket. Master Response 4 (entitled Electric Utility Rates) in Appendix P to the Final EIR addresses ratemaking comments. Master Response 4 accurately states that a rate increase to permit Liberty Utilities to recover the capital investment associated with construction of any phase of the Proposed Project would require Commission approval of specific tariffs after the new utility infrastructure is in service. The regulatory process would include public notice and an opportunity for public comment. Furthermore, rate allocation differs among customer classes (for example, residential and commercial) based on nature and volume of usage and rate recovery for major infrastructure projects occurs over time. Thus, the potential rate impact to any single customer is not equivalent to total project cost ÷ total number of customer accounts.

GO 131-D does not require a detailed showing of either need or cost in a PTC application but, as noted previously, a primary thrust of the NTCAA and Grassi opposition has been the repeated challenge of both issues. In particular, they have challenged the way the planning documents project potential load growth on the North Lake Tahoe Transmission System, since load growth creates the construction triggers for Phases 2 and 3.

Given the ongoing controversy, TRPA determined to retain an electrical engineer and consultant with many years' experience, Paul Scheuerman (Scheuerman) to review the Draft EIR's Chapter 2, entitled Purpose and Need, and the comments received after its public release.²⁰

NTCAA has focused on Sierra's 1996 planning study (referred to as the North Tahoe Capacity Plan), which formed the basis for two 2011 reviews commissioned by Liberty Utilities (ZGlobal's Capacity Plan Validation Report and Tri-Sage Consulting's Electric Transmission System Upgrade).²¹ NTCAA's witness Besich reviewed these planning documents and contends that they contain multiple flaws, but that "they do manage to demonstrate the present need for a project to reconductor the portion of the 650 Line between Truckee and Northstar." (Ex. 3 at 3.) He argues that the rest of the Proposed Project could be deferred, largely by additional "load rolling" and additional demand

²⁰ Scheuerman was retained by Dudek Engineering & Environmental, an environmental consultant under contract to the Commission. Dudek/Scheuerman became a subcontractor to Ascent Environmental, Inc., the lead environmental consultant for the EIS/EIS/EIR. NTCAA and Grassi erroneously contend that Scheuerman worked as a consultant to Sierra and/or to Liberty Utilities. Scheuerman's resume is part of Appendix P2b to the Final EIS/EIS/EIR (at pdf 452-454).

²¹ These documents are part of the CEQA administrative record.

side management.²² [See Ex. 3 at 5.] The EIR rejects both as adequate measures for reliable long term planning. The EIR states “it is not technically feasible to implement sufficient demand-side measures to avoid the need for improvements to delivery infrastructure ...” (Final EIS/EIS/EIR at 3-85; *see also* Appendix P at P1a-11.) And with respect to load rolling, the EIR notes NV Energy’s letter, dated February 19, 2014, confirming its willingness to provide electricity in an “emergency” and on an “as available basis” but warning that “Liberty Utilities should not consider our prior ability to assist as an indication of our future ability to provide any permanent solution for Liberty’s loading issues in the north Lake Tahoe area.” (Final EIS/EIS/EIR, Appendix P at P1a-113, P1a-157.)

NTCAA also has challenged the way the planning documents project potential load growth on the North Lake Tahoe Transmission System. NTCAA argues that Liberty Utilities’ load growth triggers have little to do with projected demand on the North Lake Tahoe Transmission System, but rather reflect the impact of likely demand increases on the two systems with which it is interconnected, the Truckee Donner Public Utility District (TDPUD) and the NV Energy system. Sierra and Liberty Utilities have used all of the substations connected to the North Lake Tahoe Transmission System to model load flow - Liberty Utilities’ Brockway/Kings Beach, Tahoe City, Squaw Valley, Northstar and Glenshire substations, together with TDPUD’s Martis Valley and Truckee substations and NV Energy’s Truckee substation. NTCAA argues that only four Liberty Utilities substations are determinative and should be used - Squaw Valley, Tahoe City, Kings Beach, and Northstar.

²² Besich’s describes load rolling as “a very common utility practice involving the transfer of loads from one substation to another via distribution ties.” (Ex. 3 at 6-7.)

Appendix P2b to the Final EIR includes two documents prepared by Scheuerman and dated March 24, 2014: a draft “Report on Findings Re: Need for Upgrade of North Lake Tahoe Electric Transmission System” and “Memo: Response to comments from [NTCAA].” Both documents largely respond to NTCAA’s comments on the Draft EIR. Scheuerman concludes that 1% growth is a possibly conservative but reasonable assumption “given the inherent uncertainties involved in the load forecasting process especially when considering impacts from the recent economic downturn, potential for new resort development and improvements and the managed growth condition in the area.” (Final EIS/EIS/EIR, Appendix 2b at pdf 460.) He adds, “Planning on zero growth could be shortsighted with negative economic impacts and could place the system operator in jeopardy of not meeting its regulatory obligation under the NERC [North American Electric Reliability Corporation] and WECC [Western Electricity Coordinating Council] planning criteria.” (*Id.* at pdf 460-461.)

NTCAA and Grassi have criticized this work also. In NTCAA’s view, Scheuerman’s analysis “depended upon generalities as if looking at the system from 50,000 feet.” (NTCAA Opening Brief at 6.) NTCAA theorizes that “[Sierra] wants [Liberty Utilities] to build their proposed project for a free reliable back-up source for their Incline Village, Nevada service area, and for their substations in Truckee” that provide power to TDPUD. (NTCAA reply brief at 5.)

Liberty Utilities contests this assessment, stating:

Liberty Utilities will proceed with Phase 2 and Phase 3 only if load growth and other conditions relating to best ensuring reliability and safety on the Liberty Utilities system warrant the need (*i.e.*, **if the load at the five Liberty Utilities substations does not increase**, as NTCAA projects, **but the TDPUD/NV Energy substation load increases by 10 MW**, and assuming no

other considerations, Liberty Utilities will continue to defer Phase 2 and Phase 3 even if the respective 89 MW and 100 MW system loads the FEIR designates as triggering points are projected. (Liberty Utilities Opening Brief at 3-4, emphasis [and italics] added.)

Liberty Utilities does not mention what other considerations might affect its view of need, or how it would prevent load growth outside of its own system from influencing the construction timetable for Phases 2 and 3. These qualifications would need to be addressed for Liberty Utilities to commence construction of Phase 2, and then Phase 3, on the staggered timetable it has proposed. However, the EIR supports Liberty Utilities' basic contention that all interconnected substations should be included in an accurate modeling of demand since the four 60kV transmission lines and one 120 kV transmission line that comprise the North Lake Tahoe Transmission System are "configured as a single interconnected electrical network to provide service" to all of those substations. (Final EIS/EIS/EIR, Appendix P2b at pdf 456.) "Given the basic network nature of the system, modifications to one section of the network will have impacts throughout the remainder of the network." (*Id.*)

NTCAA argues that the system serves two distinct areas, the Lake Tahoe Basin and further inland, the ski resorts around Northstar, which NTCAA refers to as the Resort-Tahoe Loop, or RTL. The Final EIR states that NTCAA's assessment "does not recognize the networked nature of the current system." (*Id.* at pdf 461.) The Final EIR concludes that "load growth on the non-RTL portion would impact the power flowing on the RTL portion and visa-versa. (*Id.*)

Appendix P4 to the Final EIR, publicly released in February 2015, includes a response to NTCAA's February 14, 2014 comment letter, which was inadvertently omitted from the September 2014 release of Appendices

P1 through 3. Much like a data request, this comment letter seeks detailed modelling inputs and other, related information used in the various planning documents. The Final EIR's response to this letter, with which Scheuerman assisted, observes that the Draft EIR does not rely upon the data sought. (See Final EIS/EIS/EIR, Appendix P4 at pdf 14.) Rather, the Final EIR "supports the full loop concept identified as the proposed project in the Final EIS/EIS/EIR as a reasonable approach based on sound engineering principles. The dates on which phase II and III will be constructed is contingent on future load growth." (*Id.*)

Regardless of opponents' sometimes inflammatory characterizations, we agree that the Phase 2 and 3 load growth triggers must be correctly measured before construction of each of those phases commences. Though GO 131-D does not require a detailed showing of need for a PTC application, the minimum showing must be accurate. Section 10 discusses the minimum level of detail we must require before construction of Phases 2 or 3 may proceed.

6. Environmentally Superior Alternative

The EIR identifies Alternative 4 as the "environmentally superior alternative" among those studied. (Final EIS/EIS/EIR at ES-7.)

In summary, the EIR finds that "[b]ased solely on impact significance conclusions, there is not a clear distinction in the level of impact among the four action alternatives." (*Id.* at ES-7.) As discussed in Section 5.3, while most potential impacts can be mitigated to a less than significant level, in two resource areas, the potential impacts are immitigable: (1) heritage, cultural and paleontological resources (i.e., damage to or destruction of both documented and undocumented heritage and cultural resources) and (2) air quality and climate change (i.e., impacts attributable to daily, construction-related emissions of certain gases and particulate matter).

Although the potential environmental impacts among the four action alternatives generally are similar, Alternative 4, which has the second lowest potential for project impacts overall, would *not* result in immitigable scenic impacts. This is the reason the EIR identifies it as the environmentally superior alternative. Though Alternative 3 would have slightly lower total environmental impacts, it would result in immitigable scenic impacts and therefore, the EIR deems it infeasible. The EIR states: “Alternative 4 (Proposed Alternative) allows facilities to be in proximity to existing roadways, while maximizing the use of the already upgraded portion of the 650 Line in Segment 650-5.” (Final EIS/EIS/EIR at ES-6.)

Appendix B to today’s decision, the Mitigation Monitoring Report and Compliance Plan (MMRCP), includes all of the environmental mitigation measures required as a condition of our authority to commence construction of any portion of Alternative 4.²³

7. Certification of EIR, Identification of Reference Exhibits

The EIR was completed after notice and opportunity for public comment on the scope of the environmental review and the draft EIR, as required by CEQA. The EIR documents all written and oral comments made on the draft EIR, and responds to them, as required by CEQA. As also required by CEQA, the EIR examines the environmental impacts of the proposed Project and a number of alternatives, including the No Project Alternative; it identifies their

²³ The MMRCP is marked “Draft” only because a few administrative matters remain to be confirmed. While there could be changes to Attachment 2 regarding the appropriate coordination contacts and schedules necessary to monitoring and enforcement, the MMRCP is otherwise complete. No mitigations can be added or removed, nor any compliance standards altered, except by a Commission decision that modifies today’s decision.

Footnote continued on next page

significant and unavoidable environmental impacts and the mitigation measures that will avoid or substantially lessen them, where possible. The EIR documents the consideration and comparison of the various alternatives, and the analysis of infeasibility, that has resulted in identification of Alternative 4 as the environmentally superior alternative pursuant to CEQA.

We have reviewed and considered the information contained in the EIR and believe it meets the requirements of CEQA. We certify that the EIR has been completed in compliance with CEQA, that the EIR was presented to us and we have reviewed and considered the information contained in it, and that the EIR reflects our independent judgment and analysis.

Accordingly, we identify the EIR as a reference exhibit and receive it into the record of this proceeding, as follows:

- a. Reference Exhibit A – California Pacific Electric Company 625 and 650 Electrical Line Upgrade Project, Draft EIS/EIS/EIR, November 2013;
- b. Reference Exhibit B – California Pacific Electric Company 625 and 650 Electrical Line Upgrade Project, Final EIS/EIS/EIR, September 2014;
- c. Reference Exhibit C – California Pacific Electric Company 625 and 650 Electrical Line Upgrade Project, Final EIS/EIS/EIR, APPENDICES (Appendices A through P3), September 2014; and
- d. Reference Exhibit D – California Pacific Electric Company 625 and 650 Electrical Line Upgrade Project, Final EIS/EIS/EIR, Appendix P4, February 2015.

8. Overriding Considerations

As discussed in Section 5.3, construction of Alternative 4 has the potential to have significant, immitigable effects in in two resource areas: (1) heritage, cultural and paleontological resources (through damage to or destruction of both documented and undocumented heritage and cultural resources) and (2) air quality and climate change (because of impacts attributable to daily, construction-related emissions of certain gases and particulate matter).

Pursuant to CEQA Guidelines § 15093, the Commission may only approve a project that results in significant and unavoidable impacts upon a finding that there are overriding considerations. Section 15093(a) describes the underlying analysis:

CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered “acceptable.”
(CEQA Guidelines § 15093(a).)

Section 15093(b) specifies that a statement of overriding considerations must be supported by “substantial evidence in the record.” (CEQA Guidelines § 15093(b).)

As discussed throughout today’s decision, the Proposed Project’s Alternative 4, which would be built in three phases over time as load growth warrants, ultimately would increase the reliability and safety of electric power delivery within the Lake Tahoe basin. The projected benefits include: single-contingency reliability on the system loop, reduced dependence on the

Kings Beach Diesel Generation Station, reduced risk of outages induced either by vegetation or wildfire, and improving access to 625 Line for maintenance.

The potential for an immitigable, significant impact in the two resource areas identified is limited in time to the construction of the Proposed Project's Alternative 4. The EIR mandates best practices to minimize the impact in each area, as well as in all others, and all required mitigations are included in the MMRCPP, Attachment 2 to today's decision. Still, the EIR finds that best practices cannot remove the potential for a significant impact.

NTCCA's witness McClure states that Lake Tahoe's designation as an Outstanding Natural Resource Water under the 1972 Clean Water Act means that a finding of overriding considerations requires "a higher standard that warrants a fact-based rationale unlike anywhere else in the United States." (Ex. 2 at 8.) NTCAA does not reference any authority for this "higher" standard of review and we are aware of none. In the context of this Commission's review, CEQA is determinative. The CEQA standard is robust and fully capable of protecting the Lake Tahoe basin during actual construction of the Proposed Project's Alternative 4, which is the timeframe when significant environmental impacts in the two resource areas could occur.

On balance, all of the foregoing together with the remainder of the record, including Attachment 3 to today's decision, the separately stated list of CEQA Findings, informs our finding that overriding considerations warrant construction of the Proposed Project in the form of Alternative 4, as conditioned by appropriate verification of the load growth triggers for commencement of Phase 2 and of Phase 3. We discuss these conditions in Section 10.

9. Electronic Magnetic Field (EMF)

The Commission has examined EMF impacts in several previous proceedings, concluding that the scientific evidence presented in those

proceedings was uncertain as to the possible health effects of EMFs.²⁴ Therefore, the Commission has not found it appropriate to adopt any related numerical standards. Because there is no agreement among scientists that exposure to EMF creates any potential health risk, and because CEQA does not define or adopt any standards to address the potential health risk impacts of possible exposure to EMFs, the Commission does not consider magnetic fields in the context of CEQA and the determination of environmental impacts.

However, recognizing that public concern remains, we do require, pursuant to GO 131-D, Section X.A, that all requests for a permit to construct include a description of the measures taken or proposed by the utility to reduce the potential for exposure to EMFs generated by the proposed project. We developed an interim policy that requires utilities, among other things, to identify the no-cost measures undertaken, and the low-cost measures implemented, to reduce the potential EMF impacts. The benchmark established for low-cost measures is 4% of the total budgeted project cost that results in an EMF reduction of at least 15% (as measured at the edge of the utility ROW).

Liberty Utilities has endorsed Sierra's Field Management Plan 625 and 650 Line Upgrade Project, filed as Appendix J to the amendment to application, which details the EMF measures proposed as part of the power line and substation upgrades. These measures include proper phasing of the power line circuitry to reduce EMFs, standardizing ROW widths to 40 feet where possible and, for the Tahoe City and Kings Beach Substations, keeping high current devices away from property lines and locating new substation components near existing power lines, to the extent possible.

²⁴ See D.06-01-042 and D.93-11-013.

10. Conditions on Approval of Phased Construction

We conclude that Liberty Utilities should be granted a PTC for the Proposed Project identified as Alternative 4, which the Final EIS/EIS/EIR describes in detail, subject to obtaining all permits and other approvals required for each phase. However, construction of Phase 2 and 3 must not commence without verification of the load growth predicates for each, the 89 MW trigger for Phase 2 and the 100 MW trigger for Phase 3. Accurate, demonstrated demand measurements, demonstrating the triggers have been reached, are necessary to establish an accurate schedule for the commencement of construction for each of these phases.

Appendix P4 to the Final EIR confirms the need for accuracy and makes three recommendations:

- Given the goal of correctly identifying the trigger points, such points must be based on system models that are accurate.
- It is not possible to correctly identify the trigger points for Phases 2 & 3 without the completion of a new network study.
- All data and assumptions for a new network study should be documented and justified along with results and power flow plots, with the final deliverable being trigger points for Phases 2 & 3.

(Final EIS/EIS/EIR, Appendix P4 at pdf 42.)

These recommendations should condition our approval. Liberty Utilities should file the new network study and load growth verification data together with its request to commence Phase 2 construction as a Tier 2 AL for review by the Commission's Energy Division. For Phase 3, Liberty Utilities also should file load growth verification data with its request to commence construction as a Tier 2 AL. If the key assumptions in the network study have not changed with

the passage of time between the Phase 2 AL filing and the Phase 3 AL filing, Liberty Utilities need not perform a second network study. We decline Liberty Utilities' request to commence construction of Phase 2 (and later, Phase 3) by a Tier 1 AL since a Tier 1 AL is effective upon filing. A Tier 2 AL is subject to our staff's compliance review and we conclude that is appropriate here.

We direct Energy Division staff to review Liberty Utilities' Phase 2 and Phase 3 AL filings for compliance with today's decision. If necessary for its review, Energy Division should utilize the consultants already contracted under the terms of the MMRCPP to assist with the review. Energy Division should not recommend approval of either AL unless the information offered to verify, respectively, the 89 MW and 100 MW construction triggers is compliant with the requirements of this decision.

We acknowledge Liberty Utilities' January 9, 2015, letter (part of Appendix P4 to the Final EIR), which reiterates its projections on the timing for construction of Phase 1 and its updated projections on the lead times required for Phases 2 and 3. For Phase 1, Liberty Utilities seeks to begin construction on June 1, 2015, so that Phase 1 is operational for the winter of 2015-2016.

For Phase 2, Liberty Utilities anticipates actual construction over about six months, and states it "may need up to 18 months from the time it determines that the system load will reach the 89 MW triggering point to provide the requisite notices, obtain any additional building permits, and procure the necessary equipment." (Final EIS/EIS/EIR, Appendix P4 at pdf 42.)

For Phase 3, Liberty Utilities anticipates construction planning over about two years, with actual construction taking about eight months during that period. Liberty Utilities predicts it "will require approximately two years before the date it determines that load will reach the 100 MW triggering point to initiate final design, refresh resource filed surveys, obtain any additional

permits, procure equipment and secure the necessary property rights.” (Final EIS/EIS/EIR, Appendix P4 at pdf 41.)

For both Phases 2 and 3, Liberty Utilities proposes to determine the approach of the requisite construction triggers in the same way. It “will monitor the actual loads at the eight substations ... and also forecast future load growth.” Final EIS/EIS/EIR, Appendix P4 at pdf 40.)

The timing projection for Phase 2 may be overly ambitious, given the need for a new network study, but nothing in this record assigns urgency to the Phase 2 upgrade (or the Phase 3 upgrade). We reiterate that a new network study must form the basis for the trigger point assessments for Phases 2 and 3. The flaws in the existing planning documents leave those documents insufficiently reliable for such use.

Subject to this condition for a new network study to verify the Phase 2 and Phase 3 construction triggers, to the mitigation measures in the MMRCPP that is Attachment 2 to today’s decision, and to the requirement that Liberty Utilities obtain all permits and other approvals for each construction phase, we approve construction of the Proposed Project’s Alternative 4.

Further, we note that Energy Division may approve requests by Liberty Utilities for minor project refinements that may be necessary due to final engineering of the Proposed Project’s Alternative 4 so long as such minor project refinements are located within the geographic boundary of the study area of the EIR and do not, without mitigation, result in a new significant impact or a substantial increase in the severity of a previously identified significant impact based on the criteria used in the environmental document; conflict with any mitigation measure or applicable law or policy; or trigger an additional permit requirement. Liberty Utilities shall seek any other refinements of the Proposed Project, Alternative 4 by a petition to modify today’s decision.

11. NCTAA Amended Motion to Compel

Still pending is NTCAA's October 13, 2014, amendment to the unresolved portion of its May 20, 2014, motion to compel specific discovery from Liberty Utilities. NTCAA's amendment has narrowed the motion to compel. NTCAA seeks the hourly load data for the Northstar, Kings Beach/Brockway, Tahoe City, and Squaw Valley substations during the Christmas/New Year peak load periods for the years 2011-2012, 2012-2013 and 2013-2014.

Under either of two theories, Liberty Utilities need not comply with NTCAA's discovery request. Procedurally, to the extent that NTCAA agreed with the other parties to have evidentiary hearings taken off calendar and to brief this matter so that it might be submitted for decision, the discovery is moot. Alternatively, to the extent that today's decision approves the PTC application with the condition that Liberty Utilities must verify Phase 2 and Phase 3 load growth triggers, the discovery is not relevant and the motion should be denied.

12. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Rules. Comments were filed on February 27, 2015, by Grassi and on March 12, 2015, by NTCAA. Liberty Utilities filed reply comments on March 17, 2015. Rule 14.3(c) states that to be accorded any weight, comments on a proposed decision must focus on factual, legal, or technical rules.

We have revised the proposed decision to correct to inadvertent typographical errors and omissions and to make minor edits in response to comments.

Grassi Comments. Grassi takes exception to the proposed decision's rationale, reiterates his opposition to the Proposed Project, and states his support for NTCAA's comments based on a draft he says NTCAA provided to him. Grassi then makes two requests: (1) that the Commission "allow NTCAA and Grassi to participate in the New Network Study and to submit information they deem appropriate to insure an accurate, correct and transparent analysis" and (2) that NTCAA and Grassi receive notice of Liberty Utilities' Tier 2 AL filing(s) and all associated documents. (Grassi comments at 9-10.) The Tier 2 AL process required here will provide public notice of, and permit public comment on, the new network study Liberty Utilities must file to support the timing for commencement of Phase 2 and Phase 3. The Commission's GO 96-B requires utilities to serve advice letters on all appropriate service lists; to ensure service on the parties to this proceeding, we will revise the proposed decision to require service on the service list created for this application. We do not need to give NTCAA or Grassi permission to provide their suggestions for the new network study to Liberty Utilities – they may do so if they wish. Likewise, Liberty Utilities may solicit input from its customers. However, our authority to mandate the study stems from our regulatory authority over Liberty Utilities and it is Liberty Utilities that must prepare the Tier 2 AL(s), including all supporting documentation, and file those ALs for review.

NTCAA comments. NTCAA "supports the spirit of the Proposed Decision" but then offers a series of purportedly technical edits that essentially would revise the nature and purpose of the new network study required before Liberty Utilities may construct Phase 2 or Phase 3. NTCAA's basic contention is that the 89 MW and 100 MW triggers should be reevaluated, not just the timing of demand increases they represent. The proposed decision requires a new

network study to justify the timeline for Phase 2 construction and Phase 3 construction – in other words, to reassess the year in which demand will reach 89 MW and the year in which demand will reach 100 MW. The MW values for these trigger points have been used consistently in the EIR analyses.

NTCAA's comments on the EIR, its prepared testimony and its briefs have urged a relook at the planning horizon for the second and third stages of the Proposed Project. The proposed decision agrees that the timing should be reexamined, given acknowledged flaws in the initial planning documents. The proposed decision does not abandon the 89 MW and 100 MW demand growth triggers, however, nor does the record support that result.

In accordance with Rule 14.3, we decline to make most of NTCAA's other, suggested changes – the proposed decision accurately quotes from the EIR and accurately describes the bases on which Grassi and NTCAA have standing to participate as parties. We do amend the Section 1 summary of the Phase 1 construction components, as described in the application and amended application, to note that a portion of the work was authorized in 2014 through an advice letter process.

Liberty Utilities reply comments. Liberty Utilities asks the Commission to adopt the proposed decision without delay so that Phase 1 construction can commence.

13. Assignment of Proceeding

Michel Peter Florio is the assigned Commissioner and Jean Vieth is the assigned ALJ in this proceeding.

Findings of Fact

1. The Proposed Project, Alternative 4 would have significant and unavoidable adverse impacts in two resource areas during construction:

(a) heritage, cultural and paleontological resources and (b) air quality/climate change.

2. Alternative 4 is the environmentally superior alternative for the Proposed Project; it has the second lowest potential for project impacts overall, would *not* result in immitigable scenic impacts.

3. The Commission has reviewed and considered the information contained in the EIR.

4. The EIR reflects the Commission's independent judgment and analysis.

5. The Proposed Project, Alternative 4 would be built in three phases over time as load growth warrants and would increase the reliability and safety of electric power delivery within the Lake Tahoe basin. Major reliability and safety benefits include: providing single-contingency reliability and reducing dependence on the Kings Beach diesel plant; reducing risks of wildfire and vegetation-related outages; and improving access to the 625 Line for maintenance.

6. The Proposed Project, Alternative 4 incorporates no-cost and low-cost measures to reduce potential EMF impacts to the extent practicable.

7. Attachment 2, the MMRCP, is marked "Draft" only because a few administrative matters remain to be confirmed. While there could be changes to Attachment 2 regarding the appropriate coordination contacts and schedules necessary to monitoring and enforcement, the MMRCP is otherwise complete.

8. Construction of Phase 1 should begin this year, given the reliability and safety urgency associated with that phase.

9. Accurate demand measurements are necessary to establish an accurate schedule for the commencement of construction for Phase 2 and for Phase 3.

10. Given the flaws in the existing planning documents, Liberty Utilities should perform a new network study to verify the load growth triggers and timeline for commencing construction of Phase 2 and of Phase 3.

11. Given the basic network nature of the North Lake Tahoe Transmission System, modifications to one section of the network will have impacts throughout the remainder of the network. Therefore, the network model should include all interconnected substations to accurately model demand.

12. All data and assumptions for a new network study should be documented and justified along with results and power flow plots, with the final deliverable being the timeline “trigger points” for Phase 2 and for Phase 3.

13. If the key assumptions in the new network study have not changed with the passage of time between the Phase 2 AL filing and the Phase 3 AL filing, Liberty Utilities need not perform a second network study.

14. Liberty Utilities network study analysis must identify and explain any “other considerations” that affect its identification of the “trigger points” for the construction timetable for Phase 2 and for Phase 3 and must verify that load growth outside of its own system is not the basis for the “trigger points.”

15. Nothing in this record assigns reliability or safety urgency to the Phase 2 upgrade or the Phase 3 upgrade, though both are consistent with good engineering and planning practices.

16. Commission staff should review, for compliance with this order, the Tier 2 Advice Letter (AL) filings by which Liberty Utilities’ proposes to commence construction of Phase 2 and of Phase 3. If necessary for its review, Energy Division should utilize the consultants already contracted under the terms of the MMRCPP to assist with the review.

Conclusions of Law

1. The EIR was completed in compliance with CEQA.
2. In the area of biological resources, the significant environmental impacts resulting from construction of the Proposed Project, Alternative 4 can be mitigated to a level of less-than-significant.
3. The EIS/EIS/EIR should be identified as a reference exhibit and received into the record of this proceeding, as follows:
 - (a) Reference Exhibit A – California Pacific Electric Company 625 and 650 Electrical Line Upgrade Project, Draft EIS/EIS/EIR, November 2013;
 - (b) Reference Exhibit B – California Pacific Electric Company 625 and 650 Electrical Line Upgrade Project, Final EIS/EIS/EIR, September 2014;
 - (c) Reference Exhibit C – California Pacific Electric Company 625 and 650 Electrical Line Upgrade Project, Final EIS/EIS/EIR, APPENDICES (Appendices A through P3), September 2014; and
 - (d) Reference Exhibit D – California Pacific Electric Company 625 and 650 Electrical Line Upgrade Project, Final EIS/EIS/EIR, Appendix P4, February 2015.
4. The EIS/EIS/EIR should be certified.
5. As described in the EIS/EIS/EIR, the Proposed Project, Alternative 4, would be built in three phases over time as load growth warrants and would increase the reliability and safety of electric power delivery within the Lake Tahoe basin. Thus, the Proposed Project, Alternative 4 provides overriding considerations that support our approval, despite its significant and unavoidable impacts in two resource areas during construction: (a) heritage, cultural and paleontological resources and (b) air quality/climate change.

6. The design of the Proposed Project, Alternative 4 is consistent with the Commission's EMF policy for implementing no-cost and low-cost measures to reduce potential EMF impacts.

7. Liberty Utilities should be granted a permit to construct the Proposed Project, Alternative 4, in compliance with the EIR's MMRCPP, subject to obtaining all permits and other authority required for each construction phase, and subject to the condition that construction of Phase 2 and of Phase 3 must not commence without verification of the load growth predicates for each (the 89 MW trigger for Phase 2 and the 100 MW trigger for Phase 3) via a new network study and approval of a Tier 2 AL for each.

8. No mitigations can be added to or removed from Attachment 2, the MMRCPP, nor any compliance standards altered, except by a Commission decision that modifies today's decision.

9. Though GO 131-D does not require a detailed showing of need for a PTC application, the minimum showing must be accurate.

10. The NTCAA's amendment to motion to compel discovery from Liberty Utilities, filed on October 13, 2014, should be denied under alternative theories because the discovery sought: (a) is now moot or (b) is not relevant.

11. This proceeding should be closed.

12. This order should be effective immediately to ensure that Liberty Utilities may continue to meet demand in on the North Lake Tahoe Transmission System without delay.

O R D E R**IT IS ORDERED** that:

1. Liberty Utilities (CalPeco Electric) LLC (referred to as Liberty Utilities in these Ordering Paragraphs) is granted a Permit to Construct the Proposed Project, Alternative 4, as identified in the Environmental Impact Statement/Environmental Impact Statement/Environmental Impact Report. Construction of the Proposed Project, Alternative 4, shall proceed in three separate phases, subject to Liberty Utilities obtaining all permits and other approvals required for each phase and subject to the following additional conditions:

- (a) Construction of Phase 1 may commence upon the effective date of this order;
- (b) Construction of Phase 2 shall not commence without verification that load growth on the North Lake Tahoe Transmission System is approaching 89 megawatts (MW), as further specified in Ordering Paragraphs 2 and 3;
- (c) Construction of Phase 3 shall not commence without verification that load growth on the North Lake Tahoe Transmission System is approaching 100 MW, as further specified in Ordering Paragraphs 2, 3 and 4; and
- (d) Construction of each of phase must comply with the Mitigation Monitoring, Reporting, and Compliance Program, and appended to this order as Attachment 2.

2. Liberty Utilities LLC, shall perform a new network study to verify the load growth predicates that warrant commencement of Phase 2 and of Phase 3; all data and assumptions for the new network study must be documented and justified along with results and power flow plots, with the final deliverable being the construction commencement timeline (i.e., the “trigger points”) for Phase 2 and for Phase 3. Liberty Utilities new network study analysis must

identify and explain any "other considerations" that affect its identification of the trigger points and must verify that load growth outside of its own system is not the basis for the trigger points.

3. Liberty Utilities must file the new network study and other information supporting the construction commencement timeline (i.e., the "trigger points") for Phase 2 in a Tier 2 Advice Letter for review by the Commission's Energy Division. Liberty Utilities must file the Tier 2 Advice Letter on the service list for Application 10-08-024, together with all other service required by General Order 96-B.

4. For Phase 3, Liberty Utilities must file information supporting the construction commencement timeline (i.e., the "trigger points") for Phase 3 in a Tier 2 Advice Letter (AL) for review by the Commission's Energy Division. If the key assumptions in the new network study have not changed with the passage of time between the Phase 2 AL filing and the Phase 3 AL filing, Liberty Utilities need not perform a second network study. Liberty Utilities must file the Tier 2 Advice Letter on the service list of Application 10-08-024, together with all other service required by General Order 96-B.

5. If necessary, the Commission's Energy Division shall utilize the consultants already contracted under the terms of the Mitigation, Monitoring, Reporting and Compliance Program to assist with review of the Phase 2 Advice Letter (AL) and the Phase 3 AL. Energy Division shall not recommend approval of either AL unless the information supporting the construction commencement timelines (i.e., the "trigger points") is compliant with the requirements of this decision.

6. The Commission's Energy Division may approve requests by Liberty Utilities for minor project refinements that may be necessary due to final

engineering of the Proposed Project, Alternative 4 so long as such minor project refinements are located within the geographic boundary of the study area of the Environmental Impact Statement/ Environmental Impact Statement/Environmental Impact Report (EIS/EIS/EIR) and do not, without mitigation, result in a new significant impact or a substantial increase in the severity of a previously identified significant impact based on the criteria used in the EIS/EIS/EIR; conflict with any mitigation measure or applicable law or policy; or trigger an additional permit requirement. Liberty Utilities shall seek any other project refinements by a petition to modify today's decision.

7. The Environmental Impact Statement/Environmental Impact Statement/Environmental Impact Report is identified as a reference exhibit and received into the record of this proceeding, as follows:

- (e) Reference Exhibit A – California Pacific Electric Company
625 and 650 Electrical Line Upgrade Project, Draft
EIS/EIS/EIR, November 2013;
- (f) Reference Exhibit B – California Pacific Electric Company
625 and 650 Electrical Line Upgrade Project, Final
EIS/EIS/EIR, September 2014;
- (g) Reference Exhibit C – California Pacific Electric Company
625 and 650 Electrical Line Upgrade Project, Final
EIS/EIS/EIR, APPENDICES (Appendices A through P3),
September 2014; and
- (h) Reference Exhibit D – California Pacific Electric Company
625 and 650 Electrical Line Upgrade Project, Final
EIS/EIS/EIR, Appendix P4, February 2015.

8. The Environmental Impact Report (within the joint Environmental Impact Statement/Environmental Impact Statement/Environmental Impact Report) is certified.

9. No evidentiary hearings are necessary.

10. The Mitigation Monitoring, Reporting, and Compliance Program appended to this order as Attachment 2 is approved.

11. The California Environmental Quality Act Findings appended to this order as Attachment 3 are approved.

12. The amendment to motion to compel discovery from Liberty Utilities, filed by North Tahoe Citizen Action Alliance (NTCAA) on October 13, 2014, is denied under either of two alternative theories. To the extent that NTCAA agreed with the other parties to have evidentiary hearings taken off calendar and to brief this matter so that it might be submitted for decision, the discovery is moot. To the extent that today's order approves this application subject to the condition that Liberty Utilities LLC must verify Phase 2 and Phase 3 load growth triggers through a new network study, the discovery is not relevant.

This order is effective today.

Dated _____, at San Francisco, California.